



CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 07/26/05

AGENDA ITEM 6

WORK SESSION ITEM _____

TO: Mayor and City Council

FROM: Director of Community and Economic Development

SUBJECT: Variance PL-2005-0124 - Request to Allow a One-Bedroom Addition with a One-Car Carport and an Uncovered Parking Space Where a Two-Car Garage Is Required – Ryan Akin (Applicant/Owner) - The Property Is Located at 1090 Highland Boulevard

RECOMMENDATION:

It is recommended that the City Council adopt the attached resolution, finding that the project is categorically exempt from CEQA review, and approving the variance subject to the attached modified Conditions of Approval.

DISCUSSION:

On May 19, 2005, the Planning Commission, by a vote of 5-0, approved a variance to allow a one-bedroom addition to the applicant's single-family residence with uncovered parking spaces. Approval was conditioned upon the parking spaces being located outside of the public right-of-way and otherwise being in compliance with the City's Parking Regulations.

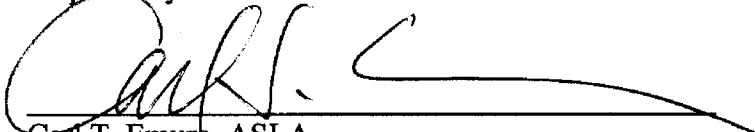
On July 12, 2005, the City Council heard an appeal of the Commission's action by the applicant, requesting that he be allowed to locate the parking spaces within the unused portion of the public right-of-way. The Council was supportive of the applicant's request and directed staff to return to with a parking plan, including a carport, using the back of sidewalk as a "functional" property line.

Staff recommends a plan locating a carport in the vicinity of the existing carport and uncovered parking space (see Exhibit B). Cars would be parked parallel to Highland Boulevard generally as they are now. This plan would require removing the retaining wall and walkway parallel to the side property line and adding a new 5-foot high retaining wall along an expanded driveway in order to meet the setback, backup and turning radius requirements for the carport. In addition, a portion of the exiting steps would have to be replaced. Landscaping would screen the parking spaces from the street.


The applicant proposes to locate uncovered parking spaces in the same location (see Exhibit C). However, the driveway would be relocated so that cars would be parked perpendicular to the street and back straight out as is typical for a single-family residence. Staff review of the applicant's proposal has determined that the slope of the driveway would be at 30-40 percent, exceeding the 10-percent slope allowed by the City's Standard Details. With that slope, it is likely that cars would

“bottom out” as they enter or exit at the street. To reduce the slope, the parking pad would need to be raised by increasing the height of the existing retaining walls and requiring an additional retaining wall parallel to the north property line.

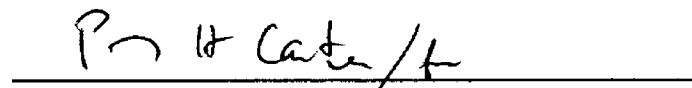
Prepared by:


Carl T. Emura, ASLA
Associate Planner

Recommended by:

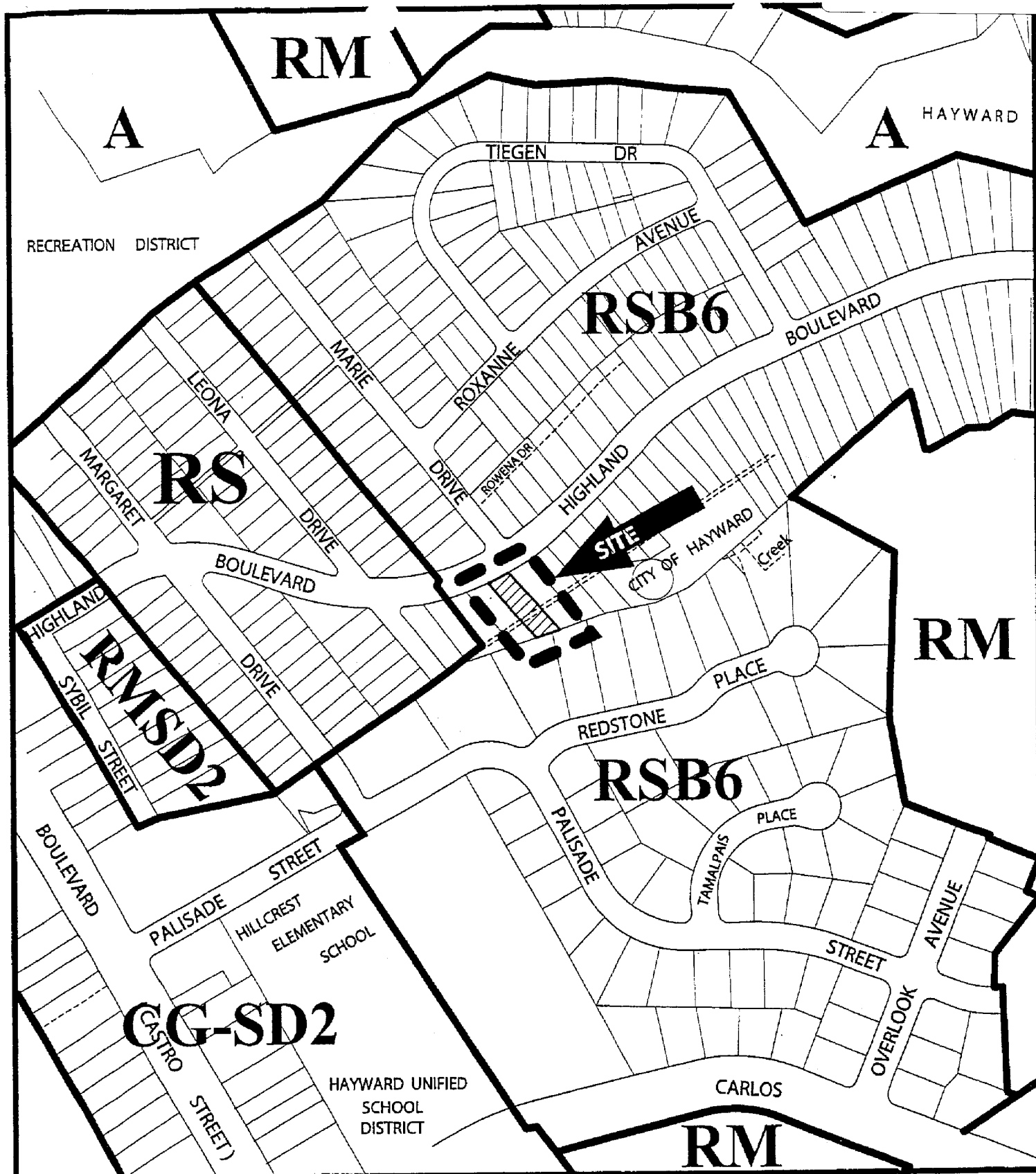

Sylvia Ehrenthal
Director of Community and Economic Development

Approved by:


Jesús Armas, City Manager

Attachments: Exhibit A. Area Map
Exhibit B. Staff Recommendation
Exhibit C. Applicant Proposal
Exhibit D. Conditions of Approval
Exhibit E. Draft City Council Meeting Minutes, dated July 12, 2005
Exhibit F. City Council Agenda Report, dated May 12, 2005
Draft Resolution

7/21/05



Area & Zoning Map

PL-2005-0124 VAR

Address: 1090 Highland Blvd.

Applicant:

Owner:

A-Agricultural-ABSA,AB10A,AB100A,AB160A

CG-General Commercial

RM-Medium Density Residential RMB 3.5, RMB 4

RS-Single-Family Residential,RSB4,RSB6

SD-Special Design



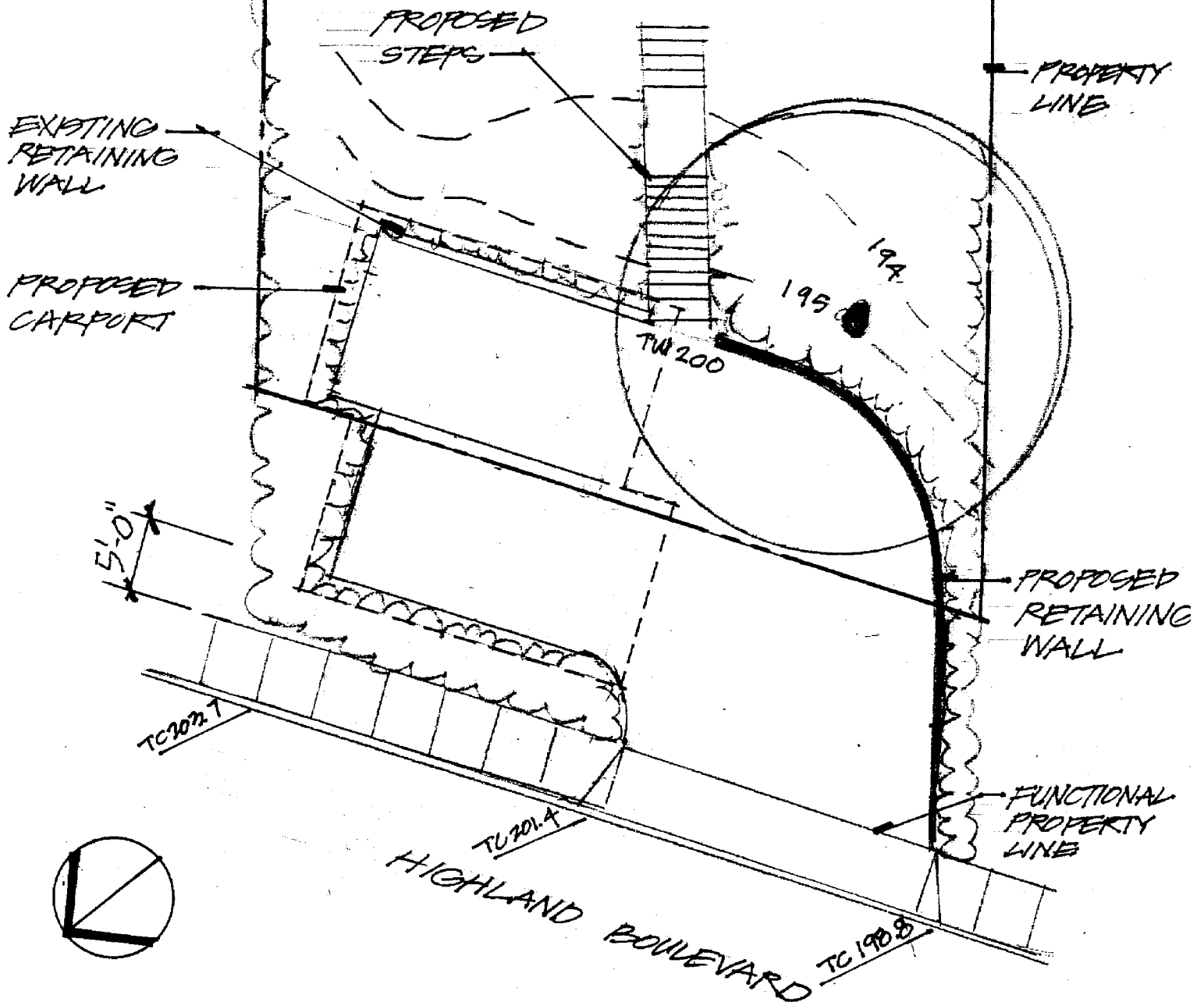


EXHIBIT "B"

STAFF RECOMMENDATION

1" = 10'-0"

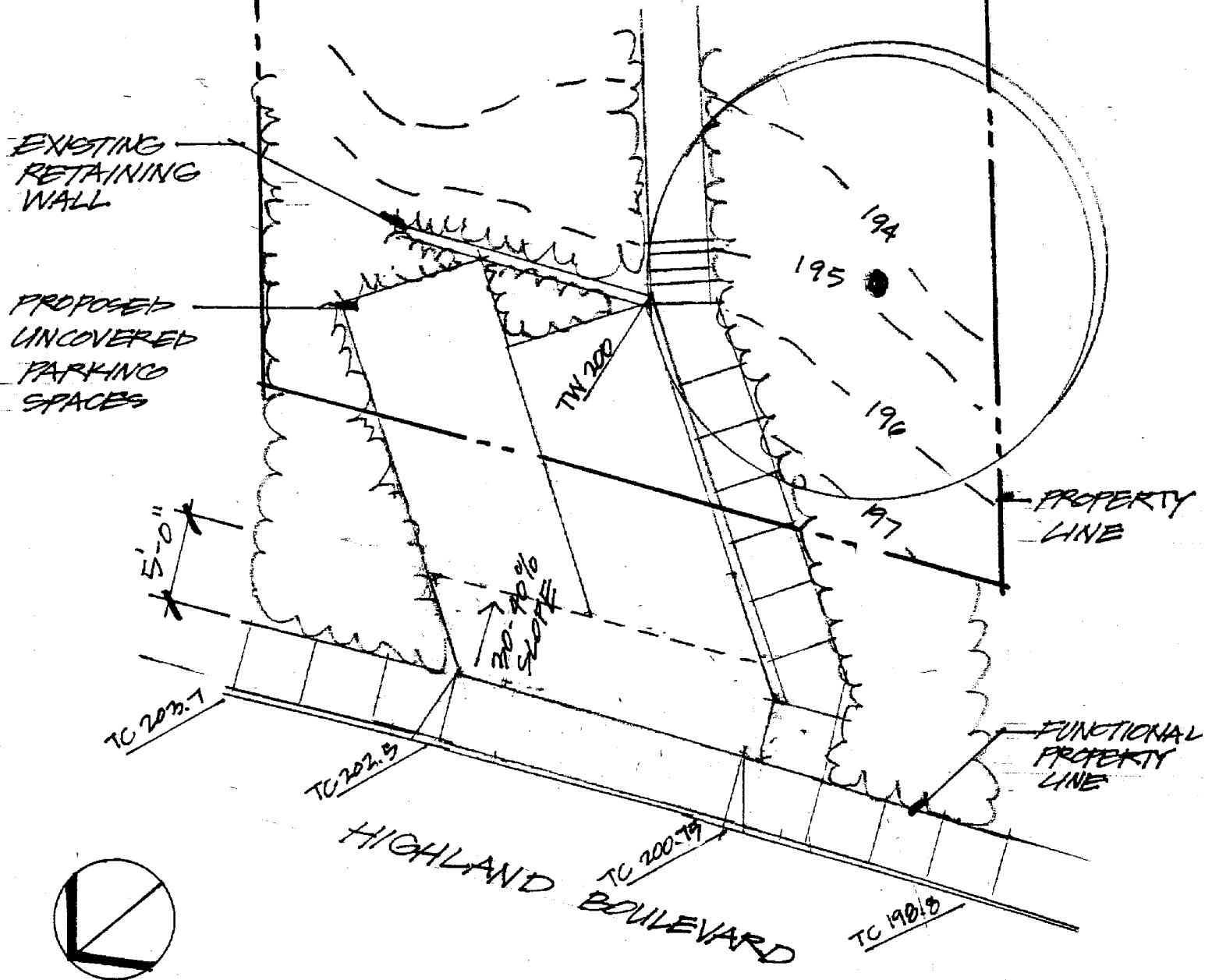


EXHIBIT "C"

APPLICANT'S PROPOSAL

1"=10'-0"

**CITY OF HAYWARD
CITY COUNCIL
CONDITIONS OF APPROVAL**

July 26, 2005

Variance No. PL-2005-0124 – Request to allow a bedroom addition with a one car carport and an uncovered parking space where a two car garage is required.

The Property is Located at 1090 Highland Boulevard, in a Single-Family Residential (RS) Zoning District

1. The Variance Application No. PL-2005-0124, to allow a bedroom addition with a two-car carport where a two car garage is required, is approved by the City Council on July 12, 2005 subject to these conditions of approval and the plans, labeled Exhibit "A".
2. This approval is void one year after the effective date of approval unless a building permit application has been issued by the Building Official. Any modifications to the approved site plan or conditions shall require prior review and approval from the Planning Director.
3. The conditions of approval shall be shown of the plans submitted for a building permit.
4. If a building permit is issued for construction of improvements authorized by the Variance approval, the Variance approval shall be void two years after issuance of the building permit, or three years after approval of the application, whichever is later, unless the construction authorized by the building permit has been substantially completed or substantial sums have been expended in reliance upon the Variance approval.
5. The new carport shall comply with the City's Parking Regulations setback requirements. The applicant may use the rear of the installed public street improvements as the "functional" property line subject to the issuance of an encroachment permit by the City, and/or similar permit required by the City Engineer.
6. Prior to final inspection/occupancy of the addition, all improvements and conditions of approval shall be completed to the satisfaction of the Planning Director.
7. A 15-gallon street tree (type subject to approval by the City Landscape Architect) shall be planted per the City tree planting detail SD-122. Street tree shall be planted a minimum of 5-feet from any utility. The required street tree shall not be severely topped or pruned shall.
8. Landscaping shall be provided in the public right-of-way; a landscape and irrigation plan shall be submitted for approval by the City Landscape Architect. Plantings shall be kept low (maximum height of 3 feet) adjacent to the carport to provide maximum visibility. Landscaping shall be maintained in a healthy, weed-free condition at all times with replacement plants provided where necessary.



**MINUTES OF MEETING OF THE CITY
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, July 12, 2005, 8:00 p.m.**

MEETING

The Meeting of the City Council was called to order by Mayor Pro Tempore Jimenez at 8:00 p.m., followed by the Pledge of Allegiance led by Council Member Ward.

ROLL CALL

Present: COUNCIL MEMBERS Quirk, Halliday, Ward, Dowling, Henson
MAYOR PRO TEMPORE Jimenez
Absent: MAYOR Cooper

PRESENTATIONS: Pride in Hayward Award

Mayor Pro Tempore Jimenez presented the July Pride in Hayward Award to the following residents of the Southgate Neighborhood: Laura McCarthy, David and Dorothy Petersen, John and Isabelle Bromstead, and Jai and Chandra Prasad. He commended and thanked each for taking pride in their homes and adding to the beauty of the City of Hayward.

PUBLIC COMMENTS

Francisco Abrantes, a 30-year resident, commented on property measurements related to property at 22887 Grand Avenue.

CONSENT

1. Approval of the Minutes of the City Council Meeting of July 5, 2005.

It was moved by Council Member Dowling, seconded by Council Member Henson, and carried with Mayor Cooper absent, to approve the minutes of the City Council Meeting of July 5, 2005 with revisions to expand the comments made by Al Mendall. Council Member Henson noted that even though he was absent from this meeting, he would be voting on this item.

HEARINGS

2. Appeal of Planning Commission Approval of Variance No. PL-2005-0124 – Ryan Akin (Applicant/Owner) - Request to Allow a Bedroom Addition with a One-Car Carport and an Uncovered Parking Space Where a Two-Car Garage is Required - The Property Is Located at 1090 Highland Boulevard, in a Single-Family Residential (RS) Zoning District

Staff report submitted by Associate Planner Emura, dated July 12, 2005, was filed.

Principal Planner Patenaude made the report and described the property as a single-family house with a one-car garage at the front of the property. This driveway extends across the property into the public right-of-way. The reason it is before the Council is that the applicant wishes to make an addition to his home. In order for the applicant to add a bedroom, he must comply with the City's parking regulations, which requires a two-car garage. The applicant requested that the current parking arrangement remain and requested this variance. At the Planning Commission hearing, staff recommended an exception that allowed him to construct a carport for two cars on the owner's property, not in the right-of-way. The Planning Commission action was to allow uncovered spaces in lieu of the two-car garage with a decorative paving in the driveway on the property, noting that a structured carport would detract from hillside views. He depicted the existing retaining wall on the site plan. He discussed the requirement to construct a new retaining wall, which is the reason for the appeal. Lastly, he provided the staff recommendation to uphold the Planning Commission's decision. He responded to Council questions regarding the right-of-way, potential vacations, and the carport location.

Council Member Quirk reported that he visited the site. He commented that the City's fifteen feet of right-of-way is not improved and rather unsightly. He asked how likely the City would expand the current 40 foot road width to 60 feet. Acting Public Works Director Bauman responded that the real intent was to establish the 60 foot width, but the tract was developed at the 40 foot width due to the downhill sloping side and the need to access properties. He did not see the likelihood of the City using it, but it would not be appropriate at this time to vacate it for the entire street.

Council Member Dowling asked for clarification of the current parking configuration and whether it was in compliance with current City parking regulations. He discussed the staff recommendation that includes decorative paving and an upgrade to the landscaping.

Council Member Ward discussed the issue of consistency when the topography suggests an allowance from regulations. He asked for any past similar situations. Staff responded that there would be a significant undertaking if the right-of-way would be vacated on that street. Options were explored, but not accepted and the applicant desired to maintain the existing carport.

In response to Council Member Halliday's question regarding the parking space needs in relation to the encroachments, Principal Planner Patenaude responded that the carport and the two required parking spaces should be five feet behind the property. Currently the driveway is encroaching into the right-of-way. She asked what the cost of the bond for the property owner if that was an option. It was noted that there are several instruments, including an agreement between the applicant and the City that could be utilized. Council Member Halliday indicated that the applicant had the concern, not just the monetary considerations, but some aesthetic issues related to the location of the retaining wall. She felt that due to the unusual configuration of the property, certain considerations could be made.

Principal Planner Patenaude reported that there would be approximately ten feet from the retaining wall and the view from any window would be looking at the slope. She also asked if there are issues with parking on that street. Staff noted that parking is restricted to one side of the street.

Council Member Henson asked about neighboring conditions and if similar exceptions have been provided. Principal Planner Patenaude enumerated several instances where similar variances in the



**MINUTES OF MEETING OF THE CITY COUNCIL
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, July 12, 2005, 8:00 p.m.**

neighborhood were permitted to accommodate property owners, including garage conversions. A full garage is not being required, but the property owner must provide for two parking spaces within the property.

Mayor Pro Tempore Jimenez opened the public hearing at 8:36 p.m.

Ryan Atkin, owner of the property on Highland Boulevard, showed photos of a number of houses in that neighborhood that depict what he is asking for on his property. He was not aware of the requirement for parking when he decided to add a bedroom. He did not personally see a parking problem on that street. In response to Council Member Dowling's question, the property owner stated that he desires to utilize what is currently there. He noted that he purchased the house in its current condition eighteen months ago. He reported his intentions for the property, but did not want to build a garage nor a retaining wall. Mr. Atkin stated that one must go down two flights of stairs to access his property. With the requirement that retaining walls are limited to six feet, he reported that he would need to build two retaining walls and that one would be situated directly in front of a large bay window of his home. Building to the right with the existing carport would still encroach on the public right-of-way and backing out into the street will continue.

Council Member Dowling surmised to the applicant that he is basically asking if he could park in his front yard, when that is not allowed in the rest of the City. Mr. Atkin stated that this is the case in his neighborhood and he was hoping to eliminate his current egress that is angled, requires some maneuverings to pull in and out, and would like to be able to back out directly into the street. Mr. Atkin re-stated that he was willing to construct a carport, open to any ideas, but not open to building another retaining wall closer to his house.

City Manager Armas suggested that it may be possible to work with the applicant to create a more attractive carport with some modifications and consider granting an encroachment permit that requires such removal at a future date if necessary to widen the street.

Mayor Pro Tempore Jimenez reiterated the points to be considered and expressed his concerns against backing out onto Highland.

Mr. Atkin felt that if granted the variance, the visibility would be easier when backing out.

Council Member Ward recommended that this item be continued so that staff could work with the applicant to bring this back as there are a number of possibilities that might occur and taking action now might implicate or set a precedent.

Council Member Halliday agreed and stated that there aren't many options. This is a uniquely configured property, the street is unique and a challenging situation that could set precedent. Aesthetics matter and she was not in favor of placing a retaining wall in front of a window that could devalue the home. She felt that this was not exactly encroaching on an area that the City

intends to use. It would take substantial staff time to consider other resources, but perhaps in the future deed over to the property owners.

Council Member Dowling agreed with continuing the matter, but would like to see a covered carport. Mr. Atkin commented against it and stated that his neighbors spoke against it as it would block views for them.

Council Member Henson agreed that City Manager Armas' proposal may be a good one and suggested a careful review of its workability. He suggested looking at all alternatives.

Mr. Atkin presented another scenario to pave the entire front and discussed his views on what the city code prohibits.

Mayor Pro Tempore Jimenez closed the public hearing at 8:51 p.m.

Council Member Quirk annotated that he has a similar situation where he resides. He considered the City's fifteen feet of right-of-way as a no man's land and property owners are not likely to improve it as it might be taken by the City. He noted that the house is attractive, in spite of the unsightliness of the right-of-way. He noted that the problem is that the City could take it anytime. He realized that City time is not available to make adjustments. Since it might occur in the future, Council can recognize the property owner's ability to use the property including parking in front of the house. He was predisposed with the City Manager's suggestion that is listed as Number 1 in the report. He asked staff if details are well-defined.

City Manager Armas reiterated Council Member Ward's recommendation to take additional time to work with the applicant and determine the best effort. In response to Council Member Ward's question related to the calendar, City Manager Armas suggested the meeting of July 26.

Council Member Dowling suggested staff consider the issue of the right-of-way issue in the future.

It was moved by Council Member Ward, seconded by Council Member Dowling, and carried with Mayor Cooper absent, to continue this item until July 26.

3. Use Permit No. PL-2005-0123 – Ken Johnson (Applicant)/John Kim (Owner) – Request to Operate a Payday Loan Facility at 24457 Mission Boulevard

Staff report submitted by Principal Planner Patenaude, dated July 12, 2005, was filed.

Principal Planner Patenaude made the report, noting that the Planning Commission approved the use permit to operate the payday loan. He noted that payday loan operations are evenly distributed throughout the City. He depicted the major issues as the illegal pole sign, illegal 'land to sea' container, shrubs that need to be improved and trash receptacles that are not enclosed. The parking lot is opened to single-family homes and provides no privacy. He reported that the Planning Commission approved the use permit to operate the business, but since the applicant has no direct control over the property deficiencies added the condition that the property owner comply with the property maintenance requirements within one year.



CITY OF HAYWARD AGENDA REPORT

AGENDA DATE 07/12/05AGENDA ITEM 2

WORK SESSION ITEM _____

TO: Mayor and City Council**FROM:** Director of Community and Economic Development**SUBJECT:** Variance PL-2005-0124 - Request to Allow a One-Bedroom Addition with a One-Car Carport and an Uncovered Parking Space Where a Two-Car Garage is Required
- Ryan Akin (Applicant/Owner) - The Property Is Located at 1090 Highland Boulevard

RECOMMENDATION:

It is recommended that the City Council uphold the Planning Commission's decision to approve the variance, and deny the applicant's appeal to allow two uncovered parking spaces within the public right-of-way.

DISCUSSION:

On May 19, 2005, the Planning Commission heard the applicant's request to allow a one-bedroom addition to his single-family residence without also providing a two-car garage as required by the Off-Street Parking Regulations. The applicant requested that he be allowed to provide two uncovered spaces in lieu of the two-car garage, similar to the parking provided by other neighbors. The applicant currently has a single car carport that extends into the public right-of-way and an uncovered parking space that is also located there. Staff had recommended approval of the variance with the provision of a two-car carport; however the Commission supported uncovered parking spaces. They indicated since the home is located down slope from the street, views of the surrounding landscape could remain unobstructed if no carport were required. The Planning Commission, by a vote of 5-0, recommended approval of the variance with uncovered parking spaces. This approval required that the parking spaces be setback 5 feet minimum from the front property line, which would bring it in compliance with the City's Parking Regulations.

On May 31, 2005, the applicant appealed the decision and requested that he be allowed to use his current parking location for the two uncovered parking spaces rather than locate them further into his property in order to comply with the City's Parking Regulations. The applicant states that he would have to build a new 10-foot retaining wall ten feet from his house and it would cost as much as the bedroom addition. To address the City's concern about allowing a portion of his parking area to reside in the public right-of-way, the applicant is requesting that the City execute a covenant that would allow him use of the unused portion of the right-of-way with the condition that if the City ever needs use of the right-of-way that he would remove the paved parking area and locate it to comply with the setback requirements. The applicant states that it is not apparent that the City would be widening the street or utilizing the area. Although there is a 60-foot right-of-way, a 40-foot

residential street standard was used to minimize grading and retaining walls and avoid building on slopes. Over time, the residents on this street have treated the residual area as their private front yards, adding landscaping as well as locating parking spaces. Staff concurs that widening the street would merely add more lane width and a parking lane on the side where it does not exist. Furthermore it would locate the city sidewalk within two to three feet from the face of many homes, eliminate front yards, remove trees and landscaping and create a discordant streetscape.

Staff does not support the use of public land for private use especially due to the fact that the uncovered parking spaces could be located according to the City's Parking Regulations. Although a new retaining wall would be costly, financial hardship can not be used as a justification for granting of a variance.

If the Council is supportive of the applicant's request, the Council could direct staff to:


- 1) Allow the applicant to comply with City's Parking Regulations assuming that a "functional" property line is located at the back of sidewalk. A bond could be required to cover the removal and relocation of the parking area should the City choose to utilize the area; and/or
- 2) Direct staff to vacate that portion of the street between the back of the sidewalk and the front property line and prepare a Precise Plan to reflect these changes. This option would require significant staff resources.

The matter would have to be returned to staff for preparation of the appropriate conditions of approval.

Prepared by:


Carl T. Emura, ASLA
Associate Planner

Recommended by:

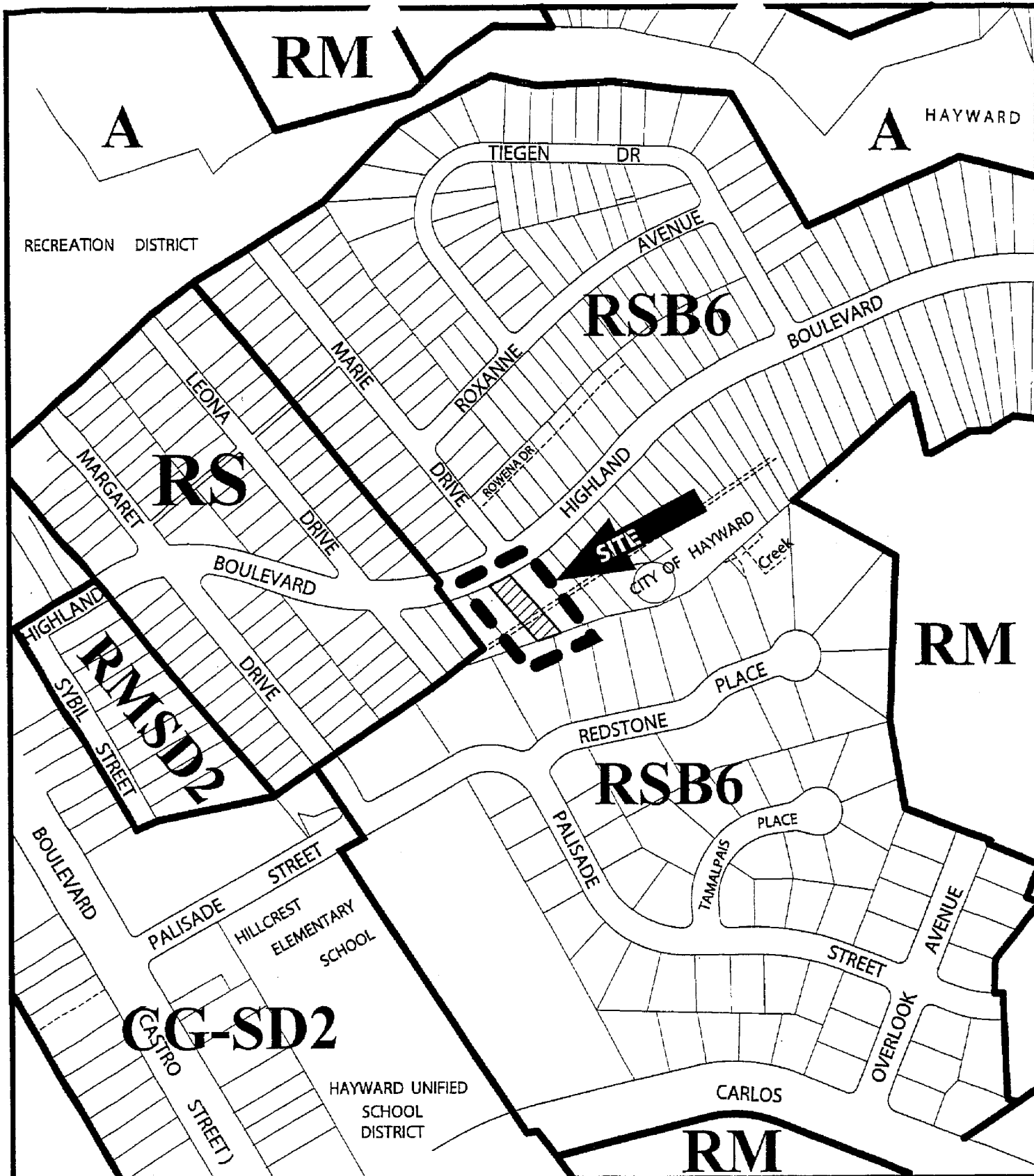

Sylvia Ehrenthal
Director of Community and Economic Development

Approved by:


Jesus Armas, City Manager

Attachments: Exhibit A. Area Map
Exhibit B. Appeal Letter dated May 31, 2005
Exhibit C. Planning Commission Meeting Minutes, dated May 19, 2005
Exhibit D. Planning Commission Meeting Agenda Report, dated May 19, 2005
Plans

7/5/05



Area & Zoning Map

PL-2005-0124 VAR

Address: 1090 Highland Blvd.

Applicant:

Owner:

A-Agricultural-ABSA,AB10A,AB100A,AB160A

CG-General Commercial

RM-Medium Density Residential RMB 3.5,RMB 4

RS-Single-Family Residential,RSB4,RSB6

SD-Special Design



May 31, 2005

Re: 1090 Highland Blvd

Hi Carl,

This letter is to inform you that I am going to appeal the decision made by the City of Hayward Planning Commission for my Variance. The Variance was actually approved with the condition that I make available a two car driveway at the top of my property. I have no problem with this except for the fact that the city has a 20 foot right of way into my existing carport and in order for me to comply with the variance, I would have to build a new retaining wall to support a longer driveway. It is not apparent to me that the city is going to widen the street or utilize the space in my existing carport, so I would like to appeal the decision of the planning commission so that may be able to use the space I already have to build my new two car driveway, without building a new retaining wall. Please feel free to call me with any questions or concerns.

Thanks,

A handwritten signature in black ink, appearing to read 'Ryan Akin', with a stylized, flowing script.

Ryan Akin

Chair Sacks thanked Mr. Bauman and staff for a well done and understandable package of information.

Commissioner Zermefio thanked staff for the presentation and mentioned that the report helps him understand the City better.

Deputy Director of Public Works Bauman mentioned that once the document is approved by Council, it will be also available on the City's website.

Commissioner McKillop moved, seconded by Commissioner Bogue, and approved with Commissioners Lavelle and Peixoto absent, to accept that the proposed Capital Improvement Program is consistent with the City's General Plan.

AYES:	COMMISSIONERS McKillop, Thnay, Bogue, Zermefio CHAIR Sacks
NOES:	COMMISSIONERS None
ABSENT:	COMMISSIONER Lavelle, Peixoto
ABSTAIN:	COMMISSIONER None

Planning Director Anderly reminded Chair Sacks that given the number of commissioners present, the approval of the variance would require at least four yes votes. Chair Sacks asked the applicant, Ryan Akin, if he wanted to proceed. Mr. Akin gave his consent.

2. Variance No. PL-2005-0124 – Ryan Akin (Applicant/Owner) – Request to Allow a Bedroom Addition With a One-Car Carport and an Uncovered Parking Space Where a Two-Car Garage is Required - The Project is Located at 1090 Highland Boulevard

Staff report submitted by Associate Planner Emura, dated May 19, 2005, was filed.

Associate Planner Emura made the report and answered questions from Commissioners.

Planning Manager Anderly added that when the Zoning Ordinance was adopted it, required that a two-car garage be added when adding a bedroom or substantially expanding the size of the house. The intent was to have adequate off-street parking.

In response to Commissioner Zermefio's question if the new carport would extend two feet into the street, Associate Planner Emura responded that the Zoning Ordinance allows for garages to be set back 5-feet from the front property line when located on slopping sites. In order to accommodate a two-car carport, the applicant would have to remove the existing retaining wall and build another retaining wall to push the carport further in so that it complies with the setback requirements for a new carport.

Commissioner Thnay, referring to the poles that sustain the carport, agreed that a garage would block the view. He asked staff for alternatives to the poles, such as landscaped trellises that give a more natural looking appearance.



**MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, May 19, 2005, 7:30 p.m.
777 B Street, Hayward, CA 94541**

Chair Sacks opened the public hearing at 7:53 p.m.

Ryan Akin, property owner, addressed the commissioners and expressed that he would like his property to conform with those in his neighborhood. He mentioned that his neighbors do not have garages or carports. Mr. Akin mentioned that he plans on redoing the driveway, repaving, and putting a fence up similar to his next door neighbors' fence. He showed a picture of his neighbor to the west of his property which does not have a carport and mentioned that he prefers not to build a carport.

Chair Sacks closed the public hearing at 7:57 p.m.

In response to Commissioner McKillop's request for clarification on condition 5, Principal Planner Patenaude mentioned that the carport that staff is recommending for this property complies with the Zoning Ordinance. He mentioned that prior to the meeting the applicant indicated that he would adhere to the recommendation.

Commissioner Thnay asked staff about other reasons for the recommendation besides the preferred City's position and the conformance with Zoning Ordinance. Principal Planner Patenaude mentioned that the recommendation would be close to the standards in the Zoning Ordinance and would be more consistent with the character of the neighborhood and outside of the public right-of-way.

Commissioner Thnay mentioned that condition # 5 is a good compromise and thus moved the item. It was seconded by Commissioner Bogue.

Commissioner McKillop agreed with the need for parking area for two cars but expressed that she would not support the motion if it included a carport. She preferred the openness to maintain the view.

In response to Commissioner Zermefio's question about the retaining walls, Principal Planner Patenaude mentioned that in order to accommodate a two-car carport, the retaining walls would have to be relocated.

Commissioner Thnay mentioned that Highland Boulevard, with a 60 foot right-of-way, has plenty of right-of-way, and asked for the rationale. Principal Planer Patenaude mentioned that to accommodate a two-car carport with the appropriate setback, the retaining wall would have to be relocated.

Chair Sacks clarified that regardless of a carport or parking space, the retaining wall would have to be moved in order to make space and keep it out of the public right-of-way.

Commissioner McKillop mentioned that she is familiar with this narrow street and she feels strong against the carport because it will make it more restrictive and confined. She proposed a friendly

amendment regarding condition #5. She would like for the language to be changed from, "a new two-car carport" to "a new two-car parking space".

Since Commissioner Thnay did not accept the friendly amendment, Commissioner McKillop then made a substitute motion, which was seconded by Commissioner Zermefio.

In response to Commissioner Zermefio's question concerning a possible change of mind of the structure by the applicant or other parties, Principal Planner Patenaude mentioned that the applicant can come back and build a carport conforming to the Zoning Ordinance requirements.

In response to Commissioner Bogue's inquiry about the need for a plan review of the structure, Principal Planner Patenaude answered that the Zoning Ordinance permits for a garage or carport to be built within 5-feet of the right-of-way. As long as the structure meets the guidelines, a site plan review would not be required.

Commissioner Thnay expressed that he would like to see the area enhanced with arbors and that a concrete stall would not be enough. Planning Manager Anderly mentioned that it would be appropriate to require landscaping. Associate Planner Emura mentioned that conditions #8 and #9 address the issue of landscaping and public right-of-way.

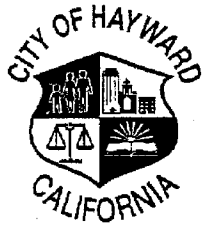
Chair Sacks spoke in favor of the substitute motion because she believes that putting any structure there would cause a sense of closing or shutting down views.

Commissioner Thnay asked for a friendly amendment that would include a landscaping plan to the satisfaction of the City.

Planning Manager Anderly mentioned that the motion that the commissioners were voting on included two parking stalls outside the right-of-way, a landscape plan that enhances the area, and consensus to work with the applicant to develop an attractive paved surface.

Commissioner McKillop moved, seconded by Commissioner Zermefio, and approved with Commissioners Lavelle and Peixoto absent, to accept that the proposed project is Categorically Exempt from the California Environmental Quality Act CEQA review, pursuant to Section 15305, Class 5a, Minor Alterations in Land Use Limitations and approve the variance application subject to the findings and conditions of approval with an exception to condition #5 and change the language from a carport to a space.

AYES:	COMMISSIONERS Thnay, McKillop, Bogue, Zermefio
	CHAIR Sacks
NOES:	COMMISSIONERS None
ABSENT:	COMMISSIONER Lavelle and Peixoto
ABSTAIN:	COMMISSIONER None



CITY OF HAYWARD AGENDA REPORT

Meeting Date 05/19/05
Agenda Item 2

TO: Planning Commission

FROM: Carl T. Emura, ASLA, Associate Planner

SUBJECT: VARIANCE NO. PL-2005-0124 – Ryan Akin (Applicant/Owner) - Request to Allow a Bedroom Addition with a One-Car Carport and an Uncovered Parking Space Where a Two-Car Garage Is Required.

The Property Is Located at 1090 Highland Boulevard, in a Single-Family Residential (RS) Zoning District

RECOMMENDATION

Staff recommends that the Planning Commission:

1. Find that the proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) review, pursuant to Section 15305, Class 5a, Minor Alterations in Land Use Limitations.
2. Approve the variance application subject to the attached findings and conditions of approval.

DISCUSSION

The applicant proposes to add a bedroom and bathroom to the residence. The Zoning Ordinance requires:

"At the time that cumulative additions to a single-family dwelling increase the original building floor area by more than 50 percent or increase the number of bedrooms, the dwelling shall be required to provide all required off-street parking."

The Off-Street Parking Regulations requires a two-car garage for each single-family dwelling unit. The applicant does not propose any changes to the parking facilities, consisting of a single-car carport and an open parking space. Therefore, he is requesting a variance to allow adding the bedroom without a two-car garage.

Background

The property, located on a curved and inclined portion of Highland Boulevard, slopes down from the street to the rear of the property. There is an 8- to 14-foot drop in elevation from the street to

the front of the house. The house, approximately 1,300 square feet, has three bedrooms and 1 bath; one bedroom is a legal garage conversion. The parcel contains 8,100 square feet. The applicant has a single car carport and an uncovered parking space. Two neighbors easterly of his property have uncovered parking spaces, the neighbor westerly of the property has uncovered parking spaces and the neighbor further up has a carport. No street parking is allowed on the applicant's side of the street.

In May 1966, a building permit was issued to construct a retaining wall between the curb and house to create a street-level parking area. In November 1972, the City cited the previous property owner for a garage conversion without a permit and required a building permit be obtained, noting the approved retaining wall blocked access to the converted garage. The owner complied and the file was closed.

In March 1973, the City issued a building permit to build a single-car carport on the street-level parking area. A recently topographic survey shows the carport extends 2 feet into the public right-of-way. The carport was built per the approved plans which showed the street curb, sidewalk, carport and retaining wall, but no property lines. Highland Boulevard, constructed to a 40-foot residential street standard with on-street parking alternating from side to side, has a 60-foot public right-of-way. The City has no plans to widen the street and a barricade further up blocks access to Campus Drive. The carport is considered a legal non-conforming structure and would be required to comply with the Zoning Ordinance if altered.

Discussion

The approval of a variance requires that all the following findings be made:

- 1) *There are special circumstances applicable to the property including size, shape, topography, location, or surroundings, or other physical constraints,*
- 2) *Strict application of the Zoning Ordinance deprives such property of privileges enjoyed by other property in the vicinity under the same zoning classification, and*
- 3) *Approval of the variance would not constitute a grant of a special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated.*

In this case, the property is a hillside lot sloping downward from the street. The change in elevation from the street to the front property line ranges from 5 to 10 feet. The applicant has provided two off-street parking spaces, albeit not by a garage, which meets the intent of the Off-Street Parking Regulations.

In this neighborhood, between 1978 and 1990, the Planning Commission approved three variances for garage conversions without otherwise providing the required two car garage. In 1993, five garage conversions were approved under the City's amnesty program. In addition, a building permit was issued in 1990 to add a bedroom where the garage had been converted and only uncovered parking was provided. Therefore, approving the variance would not be granting the applicant a special privilege not afforded to other homeowners in the neighborhood.

The applicant states a garage creates an unsafe condition and is out of character with the surrounding neighborhood. A car reversing from a garage, up a sloped driveway and on to a curved and steep street would have poor site lines from oncoming cars. Furthermore a detached garage would dominate the property and obscure views of the house below and surrounding greenery, whereas a carport or uncovered parking space would blend in with the neighborhood.

The applicant provided letters from his two neighbors on either side of him who support his application stating concern that a garage located substantially higher than the house would dominate the site, block views of their homes, hinder views of the landscape and would detract from, rather than enhance the attractiveness of their neighborhood.

The Zoning Ordinance does permit the Planning Commission to apply conditions of approval to a variance as it deems necessary to safeguard the public interest. In this case, it has been discovered that the applicant's carport extends 2 feet into the public right-of-way. Therefore, staff recommends that the non-conforming single-car carport be replaced with a two-car carport that is located such that it meets the setback requirements. The Zoning Ordinance allows a lesser front setback (5 feet) for parking structures on hillside lots, which would permit a carport to be located properly on the site and in generally the same location as the single-car carport.

ENVIRONMENTAL REVIEW

The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) review, pursuant to Section 15305, Class 5a, Minor Alterations in Land Use Limitations.

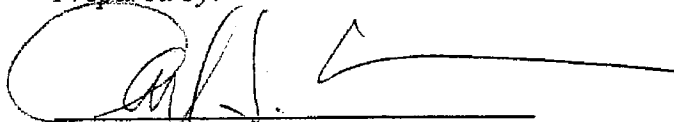
PUBLIC NOTICE

On May 9, 2005, a Notice of Public Hearing for the Planning Commission meeting was sent to every property owner and occupant within 300 feet of the subject site, as noted on the latest assessor's records. Notice was also provided to the Mission Foothill Task Force. No comments were received in response to the public notices.

CONCLUSION

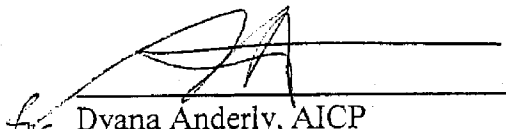
The findings can be made for the variance. There are special circumstances regarding the property and other properties in the vicinity have been allowed to add a bedroom or convert a garage without the required two-car garage. Therefore, staff recommends approval of the application.

Prepared by:

A handwritten signature in black ink, appearing to read 'Carl T. Enura', is written over a horizontal line. The signature is stylized and includes a long horizontal stroke extending to the right.

Carl T. Enura, ASLA
Associate Planner

Recommended by:


for Dyana Anderly, AICP
Planning Manager

Attachments:

- A. Area & Zoning Map
- B. Findings for Approval
- C. Conditions of Approval
- D. Letter from Applicant dated 3/7/05
- E. Letter from William J. Bishop dated 3/4/05
- F. Letter from Louis Arnold dated 3/6/05
Plans

**CITY OF HAYWARD
PLANNING DIVISION
FINDINGS OF APPROVAL**

May 19, 2005

Variance No. PL-2005-0124 – Request to allow a bedroom addition with a one car carport and an uncovered parking space where a two car garage is required.

The Property is Located at 1090 Highland Boulevard, in a Single-Family Residential (RS) Zoning District

- A. Variance No. PL 2005-0124, will have no significant impact on the environment, cumulative or otherwise, and the project reflects the City's independent judgment and is statutorily exempt from CEQA review under 15305, Class 5a, Minor Alterations in Land Use Limitations.
- B. There are special circumstances applicable to the property in that it is located on a curved and inclined portion of Highland Boulevard and slopes down from the street to the rear of the property.
- C. Strict application of the Zoning Ordinance would deprive such property of privileges enjoyed by other property in the vicinity under the same zoning classification in that other properties have been allowed to add or convert garages to bedrooms without complying with the Off-Street Parking Regulations.
- D. The variance would not constitute granting a special privilege inconsistent with the limitations upon other properties in the vicinity under the same zoning classification in which the property is situated in that other properties have been allowed to add or convert garages to bedrooms without complying with the Off-Street Parking Regulations.

**CITY OF HAYWARD
PLANNING DIVISION
CONDITIONS OF APPROVAL**

May 19, 2005

Variance No. PL-2005-0124 – Request to allow a bedroom addition with a one car carport and an uncovered parking space where a two car garage is required.

The Property is Located at 1090 Highland Boulevard, in a Single-Family Residential (RS) Zoning District

1. The Variance Application No. PL-2005-0124, to allow a bedroom addition with a one car carport and an uncovered parking space where a two car garage is required, is approved by the Planning Commission on May 19, 2005 subject to these conditions of approval and the plans, labeled Exhibit "A".
2. This approval is void one year after the effective date of approval unless a building permit application has been issued by the Building Official. Any modifications to the approved site plan or conditions shall require prior review and approval from the Planning Director.
3. The conditions of approval shall be shown on the plans submitted for a building permit.
4. If a building permit is issued for construction of improvements authorized by the Variance approval, the Variance approval shall be void two years after issuance of the building permit, or three years after approval of the application, whichever is later, unless the construction authorized by the building permit has been substantially completed or substantial sums have been expended in reliance upon the Variance approval.
5. A new two-car carport shall be provided which complies with the City's Zoning Ordinance setback requirements.
6. Prior to final inspection/occupancy of the addition, all improvements and conditions of approval shall be completed to the satisfaction of the Planning Director.
7. A 15-gallon street tree (type subject to approval by the City Landscape Architect) shall be planted per the City tree planting detail SD-122. Street tree shall be planted a minimum of 5-feet from any utility.
8. Landscaping shall be provided in the public right-of-way and front yard setback. Plantings shall be kept low (maximum height of 3 feet) adjacent to the carport to provide maximum visibility of a car pulling out of the carport.
9. Landscaping shall be maintained in a healthy, weed-free condition at all times with replacement plants provided where necessary. Required street tree that are severely topped or pruned shall be immediately replaced as determined by the City Landscape Architect.

RE: 1090 Highland Blvd.
Hayward, Ca. 94542

March 7, 2005

To the City of Hayward Planning Commission,

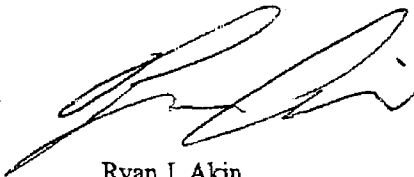
First and foremost, I would like to thank you for taking time out of your busy schedule to review my letter. My name is Ryan Akin and I am currently a resident of Hayward. I spent the majority of my childhood here in Hayward, and was very excited when I found a nice house here to purchase. I bought this home in September of 2003 in the Hayward Heights area, and absolutely love it with the exception of its size. My home is approximately 1,000 square feet with two bedrooms, one bath, and sits on an 8,000 square foot lot. Since I bought this home, I've had the intent to build another bedroom and bathroom (master suite) in the back of the house, in order to accommodate my family. I recently started the process of this addition, and have come across a bit of an obstacle.

My contractor recently went to the city planning department to get the plans approved so he can start construction; however, he was told that we could not build another room unless there is a two car garage built first, which must be at least 20 ft. from the sidewalk. Please understand that I live on a hill and there is a carport at the top of my property that does indeed fit two cars, but there would be no room to build a two-car garage 20 ft. from the curb. If I were to build a garage I would also have to build a retaining wall to support it, as there is a significant decrease in elevation from the carport to my house. I have also been told that it is a city regulation that no retaining wall can be taller than 6ft. tall. That means I would have to build *two* retaining walls at least five feet apart! This would leave the closest retaining wall practically right outside of my front window, which would dramatically decrease the value of my home as a view of a retaining wall is not marketable in any neighborhood. In my opinion, as well as my neighbors, a garage would simply tarnish the "cottage like" image that my house portrays.

Keep in mind, I do plan on re-paving and landscaping my carport in the near future, but absolutely do not want to build an enclosed garage. I do understand and appreciate that it is a city regulation to build a two car garage before a third bedroom is built; however I do hope that in my particular situation an exception can be made and my contractors plans may be accepted and approved as requested. I am very confident that if you were to see my property, you would also agree that building a two-car garage would have no effect on the home; weather it is before or after the addition is built.

I implore you to review my case and help me to rectify my problem. I have plenty of room in the back of my property, and it would in no way change the structure or use of my home to add this bedroom. I really do wish to raise my family in this house, however I need the approval of my addition in order to make a little more room for us to live comfortably. I have the full approval and support of my neighbors, and letters of support from them are available upon request. Please feel free to contact me on my cell phone anytime with any questions or concerns you may have. Thanks again for your time.

Sincerely,



Ryan J. Akin

1090 Highland Blvd.
Hayward, Ca. 94542
Hm: 510-881-4752
Cell: 415-577-6400

March 4, 2005

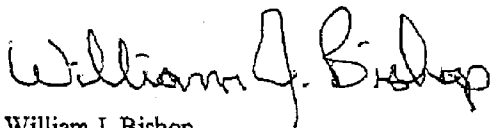
Re: Ryan Akin

To the Planning Commission of Hayward,

My name is William J. Bishop and I live at 1096 Highland Blvd.; next door to Ryan Akin. He has been planning on building an addition to the back of his house for quite some time now, and apparently is now having some trouble getting the plans approved because of the regulations of the city. It seems that these regulations are prohibiting an additional bedroom being built without building a two car garage in the front of his property first. I would like to state for the record that it would be a bother to me if he were to build a garage, mainly for the fact that it would block the a portion of the view of my house for anyone driving up our street.

Others reasons of course would be that I, as well as others I'm sure, would much rather look at a nicely landscaped yard and house rather than a garage. Please understand that in our neighborhood we mainly have carports instead of garages because our houses are a lower elevation than the street. There is no reasonable use for a garage that a carport does not already supply except for enclosing one's vehicle. Any garage built would not be touching the house, so the use of a garage would be the same exact one as a carport. Not to mention that if any one of us were to build a garage, it would hinder the views and scenery, particularly Ryan Akin. As I stated before, he lives right next door to me, so if he were to build a garage atop his property, anyone driving eastbound will not get a full view of my yard and house until they were directly in front of it I think this would have an adverse effect on my property value because I would not have the "curb-side appeal" I currently have, which is one of the more important contributing factors in appraising one's property.

Please consider approving Ryan's addition without making him build this garage. It would be nothing but an eye sore on the entire street. I'm sure our other neighbors would agree with me in saying that a garage would be a great detriment to the beauty of our neighborhood. Your consideration for making an exception to this policy would be greatly appreciated.



William J. Bishop
1096 Highland Blvd.
Hayward, Ca. 94542

Re: 1090 Highland Blvd.

March 6, 2005

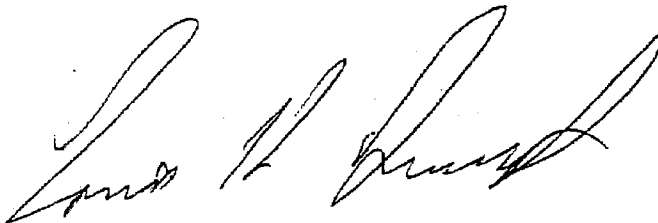
To the City of Hayward,

Hello, my name is Louis Arnold and I live at 1082 Highland Blvd. I am neighbors with Ryan Akin and have recently come to find out that he is intending on building an additional bedroom/ bathroom on the back of his house. I in no way have any problems with this of course, as this will raise the value of his house, which will indirectly raise mine, making our neighborhood a more attractive place to live.

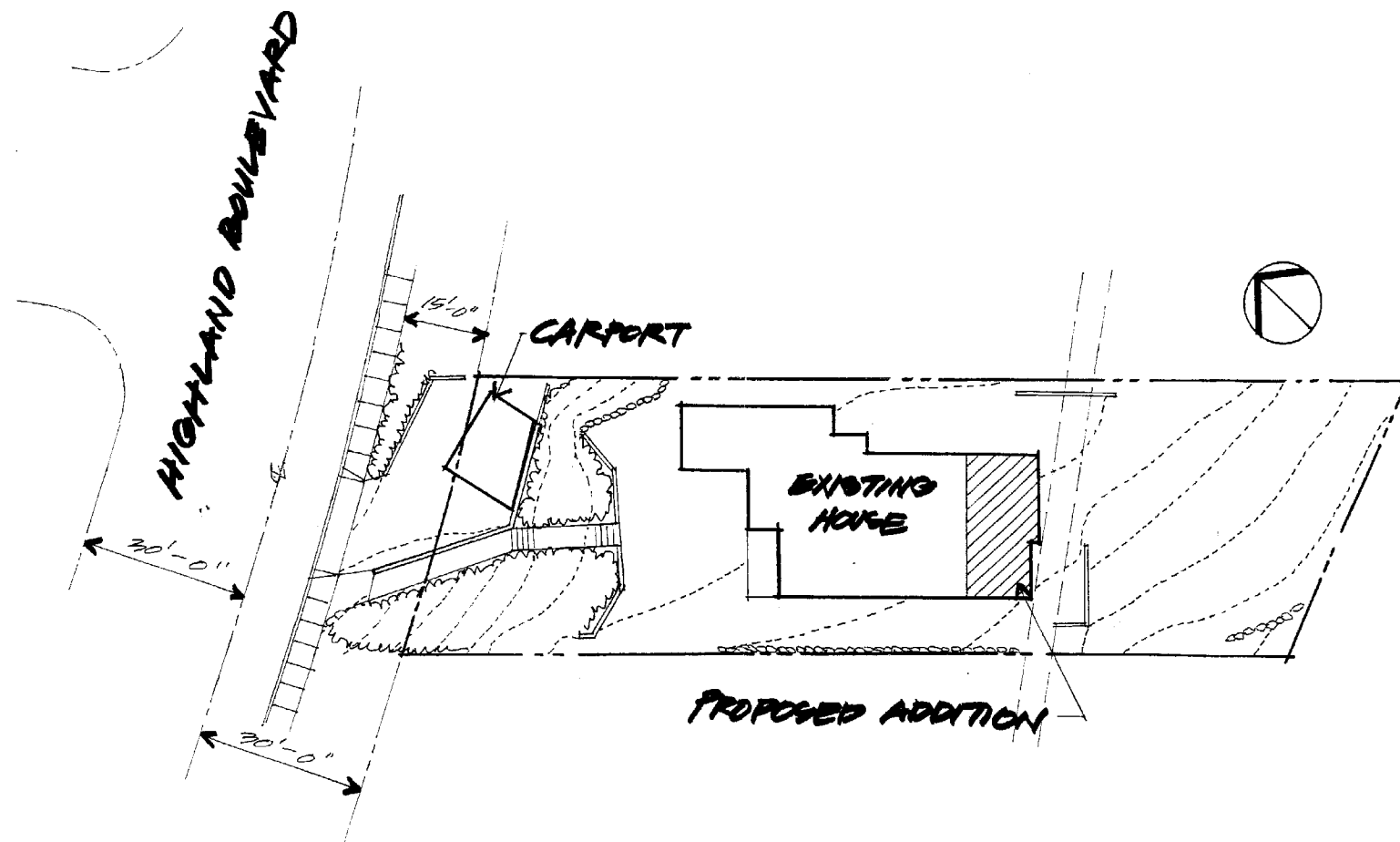
It is to my understanding that the City of Hayward is prompting him to build a garage at the top of his property. He says that it is a city regulation to build a two car garage before any additional bedroom may be built. I would like to state for the record that I do not like the idea of having an enclosed garage atop his property as it would greatly disrupt the conformity of our houses. It is my opinion that a garage would be an un-attractive object sitting right in the front of everybody's view, and would hinder, rather than help the attractiveness of our neighborhood. Currently, most of the homes here have carports or uncovered driveways because our houses are lower in elevation from the street. The carport/ parking area is the first thing viewed from the street. If a garage were built on any of these driveways, there would be no view of the surrounding landscaping, scenery, or even the house itself! It is my opinion that a two car garage would be utilized the same exact way his existing two car carport does.

Ryan had informed me that he is trying to get an exception or "variance" from you to approve his plans for the bedroom without building the garage. I would like to state that I fully support his goals, and I would be thoroughly disappointed if he were to be made to build a two car garage at the top of his property. Please feel free to contact me at any time with regards to this matter. Thank you for your time.

Sincerely,

A handwritten signature in black ink, appearing to read "Louis Arnold", written in a cursive style.

Louis Arnold
1082 Highland Blvd.



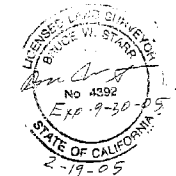
SITE PLAN

TOPOGRAPHIC SURVEY

IN THE CITY OF HAYWARD
ALAMEDA COUNTY - CALIFORNIA

LOT 5, BLOCK 6 - "HAYWARD HEIGHTS"
FILED JUNE 16, 1926 IN BOOK 10 OF MAPS AT PAGE 77, ALA. CO. REC.

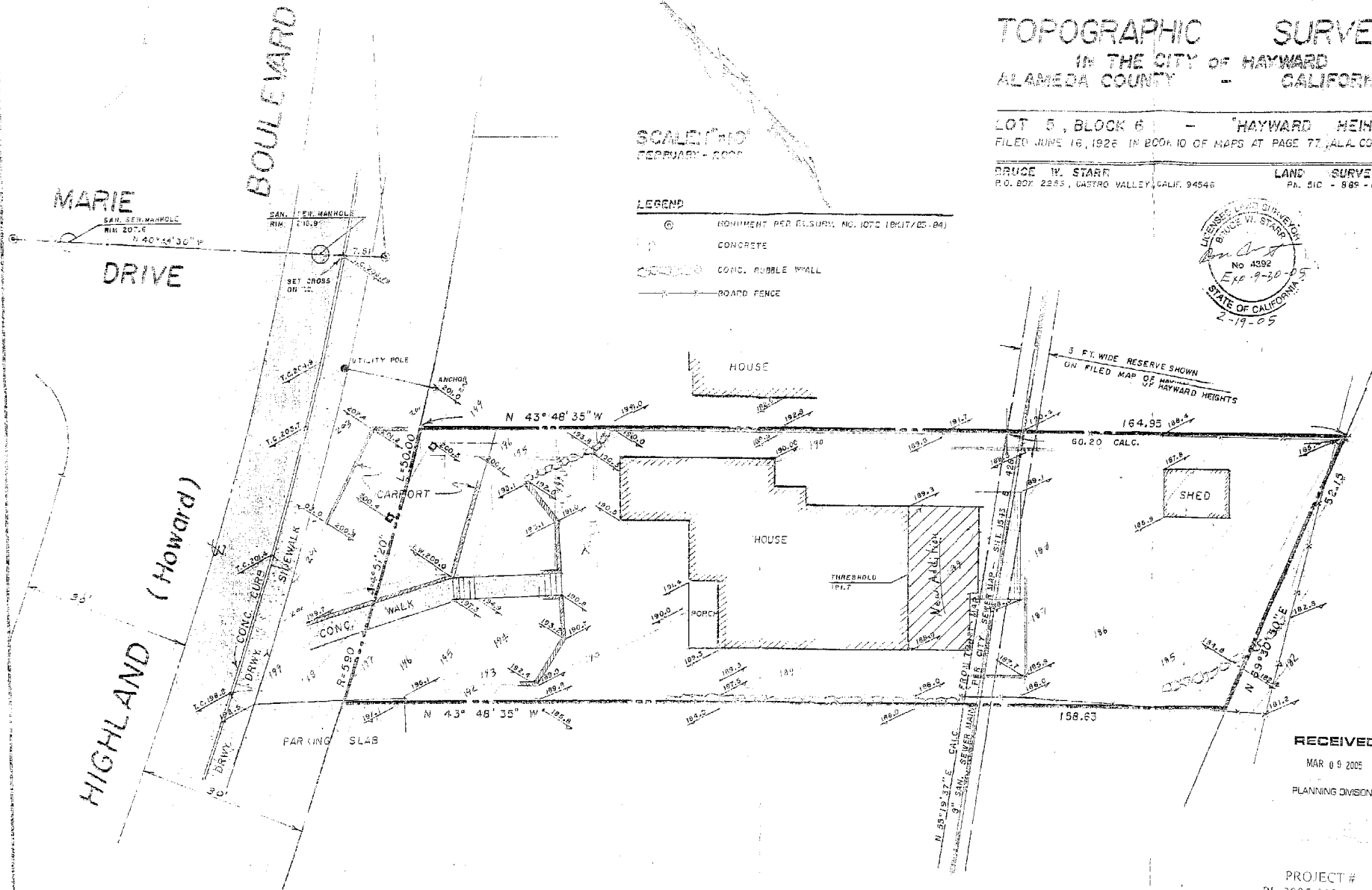
BRUCE W. STARR
P.O. BOX 2255, CASTRO VALLEY, CALIF. 94546
LAND SURVEYOR
PA. 510 - 589 - 8365



SCALE 1"=100'
FEBRUARY - 2005

LEGEND

- © MONUMENT PER ELSBORN, NO. 1070 (BOLIT/05-04)
- CONCRETE
- CONC. RUBBLE WALL
- ROAD FENCE



RECEIVED

MAR 09 2005

PLANNING DIVISION

PROJECT #
PI-2005-0124 VAR

Refer. 1545 B. 424

HAYWARD CITY COUNCIL

RESOLUTION NO. 05-

Introduced by Council Member

RESOLUTION APPROVING VARIANCE
APPLICATION NO. PL-2005-0124

WHEREAS, Ryan Akin (Applicant/Owner) has presented to the City Council of the City of Hayward Variance Application No. PL-2005-0124 to allow a one-bedroom addition with a one-car carport and an uncovered parking space where a two-car garage is required on property located at 1090 Highland Blvd; and

WHEREAS, on May 19, 2005, the Planning Commission by a vote of 5-0, found the project categorically exempt from CEQA review and approved the variance with uncovered parking spaces, conditioning its approval on the applicant's relocation of the parking spaces to not less than 5 feet from the front property line, which would eliminate the encroachment in the City's right of way; and

WHEREAS, on May 31, 2005, the applicant appealed the decision of the Planning Commission and requested that he be allowed to use his current parking location for the two uncovered parking spaces rather than locate them further into his property; and

WHEREAS, on July 12, 2005, the City Council, at a duly noticed hearing, continued the matter to July 26, 2005, to allow staff additional time to work with applicant to find a solution; and

WHEREAS, the City Council of the City of Hayward, finds and determines as follows:

1. The variance will have no significant impact on the environment, cumulative or otherwise, and the project reflects the City's independent judgment and is statutorily exempt from CEQA review under Section 15305, Class 5a, Minor Alterations in Land Use Limitations.
2. There are special circumstances applicable to the property in that is located on a curved and inclined portion of Highland Boulevard and slopes down from the street to the rear of the property.
3. Strict application of the Zoning Ordinance would deprive such property of the privileges enjoyed by other properties in the vicinity under the same zoning classification in that other properties have been allowed to add bedrooms or

convert garages to bedrooms without complying with the Off-Street Parking Regulations.

4. The variance would not constitute granting a special privilege inconsistent with the limitations on other properties in the vicinity under the same zoning classification in which the property is situated in that other properties have been allowed to add bedrooms or convert garages to bedrooms without complying with the Off-Street Parking Regulations.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward, based on the foregoing findings, hereby approves the variance to allow a two-car carport in the City's right-of-way, subject to the attached conditions of approval.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2005

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST:

_____ City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward